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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,572	03/23/2004	David L. Marvit	073338.0193 (04-50465FLA	3119

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EXAMINER	
LIANG, REGINA	
ART UNIT	**PAPER NUMBER**
2629	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/22/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/22/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/807,572	MARVIT ET AL.	
	Examiner	Art Unit	
	Regina Liang	2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,7-11 and 13-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7-11 and 13-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/23/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is responsive to amendment filed 1/25/07. Claims 1-4, 7-11, 13-21 are pending in the application.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-4, 7-11, 13-21 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/807,589. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are claiming a similar subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is an example for comparing claim 1 of this application and claim 1 of copending application 10/807,589.

claim 1 of this application	claim 1 of copending application 10/807589
a motion controlled handheld device comprising:	a motion controlled handheld device comprising:
a display having a viewable surface and operable to generate an image;	a display having a viewable surface and operable to generate an image;
a gesture database maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device, the gestures comprising symbol gestures each corresponding to a character from a preexisting character set;	a gesture database maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device;
an application database maintaining at least one application;	a plurality of applications each having a plurality of predefined commands;
a motion detection module operable to detect motion of the handheld device within three dimensions and to identify components of the	a motion detection module operable to detect motion of the handheld device within three dimensions and to identify components of the

motion in relation to the viewable surface;	motion in relation to the viewable surface;
a gesture mapping database comprising a gesture input map for the application, the gesture input map comprising mappings of the system gestures to corresponding inputs for the application	a gesture mapping database comprising a plurality of command maps, each of the command maps corresponding to a particular one of the applications and mapping each of the predefined commands to one of the gestures;

a control module operable to load the application, to track movement of the handheld device using the motion detection module, to compare the tracked movement against the symbol gestures to identify a matching symbol gesture, to identify, using the gesture input map, the corresponding input mapped to the matching symbol gesture, and to provide the corresponding input to the application; wherein a set of the inputs map to commands of the application; and wherein the symbol gestures are logically	a control module operable to load one of the applications, to select one of the command maps corresponding to the loaded application, to track movement of the handheld device using the motion detection module, to compare the tracked movement against the gestures to determine a matching gesture, to identify, using the selected command map, the predefined command mapped to the matching gesture, and to perform the identified command using the loaded application.

associated with names of the commands.	

As can be seen above, claim 1 of the copending application does not have symbol gestures each corresponding to a character from a preexisting character set and the symbol gestures are logically associated with names of the commands, however, it would have been obvious to modify claim 1 of the copending application to have the symbol gestures since this provides more gestures to input commands or data and to define the names of the gestures.

5. Claims 1-4, 7-11, 13-21 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/807,560. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are claiming a similar subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is an example for comparing claim 1 of this application and claim 1 of copending application 10/807,560.

claim 1 of this application	claim 1 of copending application 10/807560
a motion controlled handheld device comprising:	a motion controlled handheld device comprising:
a display having a viewable surface and operable to generate an image;	a display having a viewable surface and operable to generate an image;

a gesture database maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device, the gestures comprising symbol gestures each corresponding to a character from a preexisting character set;	a gesture database maintaining a plurality of predefined gestures, each gesture defined by a motion of the device with respect to a first position of the device;
an application database maintaining at least one application;	an application having a plurality of predefined commands;
a motion detection module operable to detect motion of the handheld device within three dimensions and to identify components of the motion in relation to the viewable surface;	a motion detection module operable to detect motion of the handheld device within three dimensions and to identify components of the motion in relation to the viewable surface;
	a user interface operable to receive user input associating selected ones of the gestures with corresponding ones of the commands;
a gesture mapping database comprising a gesture input map for the application, the gesture input map comprising mappings of the system gestures to corresponding inputs for the application;	a gesture mapping database comprising a command map for the application, the command map comprising mappings of the selected gestures to the corresponding commands as indicated by the user input;

a control module operable to load the application, to track movement of the handheld device using the motion detection module, to compare the tracked movement against the symbol gestures to identify a matching symbol gesture, to identify, using the gesture input map, the corresponding input mapped to the matching symbol gesture, and to provide the corresponding input to the application; wherein a set of the inputs map to commands of the application; and wherein the symbol gestures are logically associated with names of the commands.	a control module operable to load the application, to track movement of the handheld device using the motion detection module, to compare the tracked movement against the gestures to determine a matching one of the gestures, to identify, using the command map, the command mapped to the matching gesture, and to perform the identified command using the application. application.

As can be seen above, claim 1 of the copending application does not have symbol gestures each corresponding to a character from a preexisting character set and the symbol gestures are logically associated with names of the commands, however, it would have been obvious to modify claim 1 of the copending application to have the symbol gestures since this provides more gestures to input commands or data and to define the names of the gestures.

Claim Rejections - 35 USC § 102

6. Claims 1-4, 7-11, 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Mosttov (WO 03/001340).

As to claims 1, 21, Mosttov discloses a motion controlled handheld device (Fig. 1) comprising:

a display having a viewable surface and operable to generate an image;

a gesture database (the gesture recognition system 15 in Fig. 2) maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device (see page 6, lines 22-28; page 7, line 29 to page 8, line 2), the gestures comprising symbol gestures each corresponding to a character from a preexisting character set (page 8, lines 1-2);

an application database (28 in Fig. 2) maintaining at least one application (page 8, lines 8-16);

a gesture mapping database (24 in Fig. 2) comprising a gesture input map for the application (page 8, lines 17-23), the gesture input map comprising mappings of the symbol gesture to the corresponding input for the application (page 8, lines 24-28);

a motion detection module (sensors 12 in Fig. 2) operable to detect motion of the handheld device within three dimensions and to identify components of the motion in relation to the viewable surface (page 7, lines 16-25); and

a control module (Fig. 2) operable to load the application, to track movement of the handheld device using the motion detection module (12), to compare the tracked movement against the symbol gestures to identify a matching symbol gesture, to identify, using the gesture

input map, the corresponding input mapped to the matching symbol gesture, and to provide the corresponding input to the application (see page 7, line 26 to page 8, line 34 for example).

In addition, Mosttov teaches a set of the inputs map to commands of the application (pages 8, lines 8-11), and page 8, lines 1-11 of Mosttov also teaches the symbol gestures are logically associated with names of the commands (e.g., keystrode "x" is name of a command for entering the keystroke "x" within an application).

As to claims 2-4, page 8, lines 1-2 of Mosttov teaches the gestures can be tracing of letters or numbers, this reads on the preexisting character set comprises a written character set, alphanumeric character or pictographic characters.

As to claim 7, page 8, lines 1-2 of Mosttov also teaches the gestures can be tracing of letters or numbers, this reads on the symbol gesture is defined by a single continuous sequence of accelerations defined with respect to the first position.

As to claim 8, Fig. 5 of Mosttov teaches the device comprising three accelerometers (40) for detecting acceleration along three axes, the gesture database, the motion detection module and the control module as claimed.

Claims 9-11, 13-20, which are method claims corresponding to the above apparatus claims 1-8, are rejected for the same reasons as stated above since such method "steps" are clearly read on by the corresponding "means".

Response to Arguments

7. Applicant's arguments filed 1/25/07 have been fully considered but they are not persuasive.

Applicant's remarks regarding claim 1 in that Mosttov does not disclose that symbol gestures are logically associated with names of commands of an application, are not persuasive. Mosttov on page 8, lines 1-11 disclose an "x-gesture" is interpreted as a keystrode "x". Thus, the "x-gesture" is logically associated with a command named "keystrode x".

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Regina Liang
Primary Examiner
Art Unit 2674

3/19/07